APPEAL NO. 030361
FILED MARCH 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on January 10, 2003. The hearing officer resolved the disputed issues by deciding that, as a result of the hearing officer's Decision and Order of the CCH in (Docket No. 1), and affirmation by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 980346, decided March 25, 1998, and based on the doctrine of *res judicata*, the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to determine if the first certification of maximum medical improvement (MMI) and impairment rating (IR) by Dr. C on May 6, 1997, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 130.5(e) (Rule 130.5(e)); that the Commission did not have jurisdiction to determine the appellant's (claimant) date of MMI; and that the Commission did not have jurisdiction to determine the claimant's IR. The claimant appealed, arguing that the hearing officer erred in determining that the disputed issues raised at the CCH were previously litigated and finally adjudicated by the Commission, district court, the 10th Court of Appeals, and the Texas Supreme Court; that the doctrine of *res judicata* applies; and that the Commission does not have jurisdiction to determine MMI and IR. The respondent responds, urging affirmance.

DECISION

Affirmed.

The facts in this case are undisputed. The hearing officer determined that the doctrine of *res judicata* applied, thus, the Commission did not have jurisdiction to adjudicate the claimant's disputed issues.

The procedural history in this case is undisputed. A CCH was held on January 15, 1998, and the hearing officer resolved the disputed issues by determining that the first certification of MMI and IR assigned by Dr. C, the carrier's required medical examination doctor, became final pursuant to Rule 130.5(e) and therefore that the claimant reached MMI on March 4, 1997, with an IR of two percent. The claimant appealed and the Appeals Panel affirmed the hearing officer's determinations on March 25, 1998. The claimant sought judicial review of the Appeals Panel decision with the 85th District Court of Brazos County and the district court affirmed the Appeals Panel decision on February 24, 1999. The claimant appealed to the 10th District Court of Appeals and the court of appeals affirmed the district court's determination on April 4, 2001. The claimant appealed to the Texas Supreme Court and the court denied the petition for review on March 21, 2002.

The claimant argues that the doctrine of *res judicata* does not apply to this case and that the Commission has jurisdiction to adjudicate the claimant's issues, in light of the decision of Fulton v. Associated Indem. Corp., 46 S.W.3d 364 (Tex. App.-Austin

2001, pet. denied). In Fulton, the court determined that the original version of Rule 130.5(e), the 90-day rule, which restricted the time period for disputing an IR, implicitly limited a claimant's time period for revisiting the assessment of MMI, because when the IR became final, so did the determination of MMI. We disagree with the claimant's argument. In Texas Workers' Compensation Commission Appeals Panel 030284-s, decided March 18, 2003, the claimant had sought to reopen her case based on Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), however the claimant had not appealed the hearing officer's carrier waiver determination. The Appeals Panel held that where the hearing officer's decision and order were not timely appealed and became final, the Commission does not have jurisdiction to decide the disputed issues. In this case the disputed issues were fully litigated at the judicial level and the Commission no longer has jurisdiction over the disputed issues.

We agree with the hearing officer's determination that under the doctrine of *res judicata* the Commission did not have jurisdiction to consider the disputed issues of MMI and IR. The doctrine of *res judicata* "prevents the re-litigation of a claim or cause of action that has been finally adjudicated as well as related matters that, with the use of due diligence, should have been litigated in the prior suit." Barr v. Resolution Trust Corporation, ex rel. Sunbelt Federal Savings, 837 S.W.2d 627, 628 (Tex. 1992). *Res judicata* has been found applicable to administrative proceedings. *See* Bryant v. L.H. Moore Canning Company, 509 S.W.2d 432 (Tex. Civ. App.-Corpus Christi, 1974), cert. denied 419 U.S. 845; Texas Workers' Compensation Commission Appeal No. 960022, decided February 15, 1996. Regardless of whatever terminology is used, when a case has become final, either because it has not timely been appealed, or whether it has been litigated in the court system, the Commission is without jurisdiction to reopen the case. In the instant case, the claimant's MMI and IR issues had been adjudicated through the judicial review process. We recognize the need for finality in MMI and IR issues, and do not find any support for the claimant's argument. The hearing officer did not err in determining that based on the doctrine of *res judicata* the Commission does not have jurisdiction to determine the disputed issues.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **VALLEY FORGE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

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Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

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Elaine M. Chaney
Appeals Judge